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Via ECF

April 15, 2022

Honorable James R. Cho
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Llovet vs. Tessler, et al.
Case No.: 1:20-cv-5988(KAM) (JRC)

Dear Magistrate Judge Cho:

This office represents Plaintiff Jana Llovet (“Plaintiff”) in the above-referenced matter. We submit this letter requesting a pre-motion conference in connection with our Motion to Depose Rabbi Mendel Tessler Pursuant to FRCP Rule 30.

FRCP Rule 26(d)(1) provides, in pertinent part that a “party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except . . . by court order.” Under ordinary practice, in the interest of efficiency, we would be bound to wait for the Rule 26(f) conference before noticing the Rabbi’s deposition, particularly where, as here, mediation is to be scheduled. However, as we are certain you can confirm based on the attempted settlement conference of April 6, 2022, we were dismayed to witness the Rabbi’s diminished and frail condition. In the interests of preventing a failure of justice, we are bound to seek his deposition pursuant to FRCP Rule 30, as Rabbi Tessler is of advanced age and in frail health condition.

Discovery prior to the Rule 26(f) conference is referred to as “expedited discovery” or “early discovery.” See Strike 3 Holdings, LLC v. Doe, 2021 WL 535218 at *1, Slip Copy (E.D.N.Y. Feb. 12, 2021). “When considering whether to grant a motion for early or expedited discovery prior to a Rule 26(f) conference, courts apply a flexible standard of reasonableness and good cause.” Id. (internal quotes omitted).

Defendants admit that the Rabbi is 92 years old (at the time of Answer). Answer at ¶ 4 of Counterclaims. The gravity of Rabbi Tessler’s medical condition was apparent to everybody at the settlement conference. He could not walk without a walker. He was unable to wear a mask, despite the fact that all of his family members did so. He was unable or unwilling to speak, and his family members spoke for him. He appeared frail and subject to succumbing to the inevitable cycle of life.

Plaintiff respectfully submits that this request is supported by both reasonableness and good cause. The burden on Rabbi Tessler is no greater than it would be after the Rule 26(f) conference. However, due to the Rabbi’s manifestly worsening health, the central testimony from Defendants in this matter could be irretrievably lost if his condition worsens or if he passes away, making him unable to testify.

See, e.g., Cook v. Williams, 2009 WL 3246877 (E.D.MO. 2009) (plaintiff granted leave to have his video deposition taken before the Rule 26(f) conference where he was estimated to have only a few weeks to live).

Accordingly, Plaintiff respectfully requests a pre-motion conference to present preliminary arguments in support of her motion for early or expedited discovery.

Respectfully,

/s/ Darius A. Marzec

Darius A. Marzec

CC: Jill R. Cohen, Esq.
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Enclosures: None

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